IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Crl.Rev.Pet.No. 656 of 1999()

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CRA.182/1997 of ADDL. SESSIONS COURT, THRISSUR
CC.161/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER:
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RAZAK,
S/O.KARAPPANVEETTIL BHAVA,
MARUTHAYOOR DESOM,
PAVARATTY VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.C.HARIKUMAR

RESPONDENTS:
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STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.2923/1999 IN CRL.R.P.NO.656/1999

CLOSED

SD/-K.R.UDAYABHANU, JUDGE

10/07/2007

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**K.R.UDAYABHANU, J.**

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Crl.R.P.No.656 of 1999

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Dated this the 10th day of July, 2007

**O R D E R**

The revision petitioner is the first accused in C.C.No.161/1995 in the file of Judicial Magistrate of the First Class, Chavakkad, for the offences under Sections 457 and 380 I.P.C. and stands convicted for the offence under Section 411 I.P.C., as modified by the appellate court, and sentenced to undergo rigorous imprisonment for 15 months.

2. The prosecution case is that on 29/03/1994, at about 1a.m., the accused four in number, trespassed into the house of PW.1 and committed house-breaking and stole items worth 4,250/-. Accused Nos.2 and 4 were acquitted by the trial court. The third accused is absconding. Evidence adduced in the matter consisted testimony of PWs.1 to 9, Exts.P1 to P3, P1(a), P2(a), P3 (a)and MOs.1 to 6.

3. The revision petitioner/accused was arrested by the Sub Inspector of Pavaratty, who was examined as PW.8, in Crime No.83/1994. It was on questioning the accused that the offence was revealed and Crime No. 92/1994 registered on 16/06/1994. PW.8, the Sub Inspector recovered MOs.1 to 6 on the basis of the information received from the first accused. PW.1, from whose house the articles were stolen has identified MOs.1 to 5, that is, Mixie, Flask, Emergency Lamp, Two-in-one, Electric Iron. PW.2, the shop owner has testified that in March 1994, he purchased MO.1, MO.3 and MO.5, the Mixie, Emergency Lamp and Electric Iron for Rs.1,600/- from the first accused and that the articles were seized by the Police on 16/06/1994 when the police came along with the first accused and has identified the same and recovery as per Ext.P1 seizure mahazar. PW.5 is the attestor to Ext.P1 seizure mahazar. However, he did not support the prosecution version but he has admitted his signature in Ext.P1. PW.3 is a house wife, who has purchased MO.6 kettle from the accused/revision petitioner about 3 to 5 months before her examination in the court. PW.4, who is quite known to the revision petitioner has stated that he has purchased the two-in-

one, MO.4, from the accused and the police recovered the same vide Ext.P2 recovery mahazar. PW.6 is the attestor to Ext.P2. He has supported the prosecution version. PW.7 has claimed that he has purchased MO.2 flask from the revision petitioner in 1994 and that, subsequently, the police recovered the same from his house. PW.8, the police officer, who recovered the above items has testified as to the same and the relevant portions of the confession statement of the first accused is marked as Exts.P1(a), P2(a), P3(a) and P4(a).

4. The appellate court has found and rightly so, that the above confession statement did not contain any mention as to the authorship of the same. The evidence of the witnesses do establish the fact that the accused/revision petitioner is the person, who sold the above articles to the witnesses. In the absence of evidence as to the house-breaking and theft, the court convicted the accused for the offence under Section 411 I.P.C, as he has not accounted for his possession of the stolen articles.

On a consideration of the evidence adduced in the matter and the findings of the court below, I find that no interference is called for. The conviction is confirmed. It is submitted by the learned counsel for the revision petitioner that the incident has taken place more than 10 years ago and, hence, has pleaded for leniency and sought for a modification of sentence. In the circumstances, the sentence is modified to undergo simple imprisonment for six months for the offence under Section 411 of the Indian Penal Code.

The criminal revision petition is disposed of as above.

**K.R.UDAYABHANU,**
**Judge**

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**K.R.UDAYABHANU, J.**

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Crl.R.P.No.656 of 1999

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**O R D E R**

10th July, 2007